

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 296 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SUDAMASA RAGHUNATHSA & 1 - Appellant(s)
Versus
BALDEVBHAI JAYANTILAL & 2 - Defendant(s)

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Appearance :

MR NV SOLANKI for Appellant(s) : 1 - 2.
NOTICE SERVED BY DS for Defendant(s) : 1 - 3.
MS SONAL D VYAS for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 04/12/2006****ORAL JUDGMENT**

1. The original applicants of MACP No. 231 of 1994 filed before MACT, Ahmedabad [Auxi. No. III], have

approached this Court by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as the "Act"] to challenge the judgment and award made by the said Tribunal dated 30th November, 2000, whereby the Tribunal has dismissed the aforesaid petition. The said petition was filed by the present appellants to receive compensation for the death of their daughter Seema aged about eight years at the time of the accident. It appears from the record that the unfortunate child was proceeding to school around 7:00 o'clock in the morning on 7th April, 1992. It is alleged that respondent no. 1 drove his car in a rash and negligent manner and he knocked down the child causing fatal injuries. The child died almost instantaneously. It is averred by the appellants that the car belonged to respondent no. 2 and it was insured with respondent no. 3. The accident was seen by several persons. The Police was informed. The Police registered the offence against respondent no. 1 as F.I.R. No. 131 of 1992 at Odhav Police Station on that very day. It was an offence under Section 304-A of the Indian Penal Code.

2. The appellants filed the aforesaid petition under the provisions of the Act for obtaining the compensation of Rs.75,000=00. The Tribunal rejected the

petition on the ground that the appellants had failed to establish the identity of the vehicle and incidental negligence of respondent no. 1. Hence, this appeal. However, respondents no. 1 and 2 namely the driver and owner respectively were duly served, but they did not chose to file written statement and contest the petition either in person or through their advocate. Respondent no. 1 insurance company resisted the claim by filing written statement wherein, the averments made in the petition were denied.

3. Before addressing me on the merits of the case, Mr. Solanki learned advocate for the appellants has submitted that the Tribunal has carried out the exercise to assess the compensation which could have been awarded to the appellants, had the issue with regard to the negligence of respondent no. 1 been established. According to the Tribunal the appellants would have been entitled to receive Rs.1,06,000=00. He, therefore, seeks permission of the Court to amend the claim made before the Tribunal and to raise it to Rs.1,10,000=00. Considering the facts of the case, permission is granted without requiring the appellants to file necessary application for the same, at the oral application of Mr. Solanki. This is done in view of the decision rendered by

the Division Bench of this Court in the case of **Manohar Madhukar Tambe v. Bhagubhai Liladhar & Ors.**, reported in **2005 (3) G.L.H., pg. 651** and also the decision of the Apex Court in the case of **Nagappa v. Gurudayal Singh** reported in **2002 A.I.R., S.C.W., pg. 5438**.

4. Mr. Solanki learned advocate for the appellants has submitted that the findings given by the Tribunal on the issues of identity of the vehicle and negligence are erroneous. He has taken me through the record and proceedings of the case and in particular the evidence of two person who have been examined on behalf of the appellants namely Vithalbhai Shravanbhai at Exh. 23 and Karshanbhai Bhalabhai at Exh.24. From their evidence it appears that these persons had seen the accident. According to Mr. Solanki in spite of the cogent evidence, the Tribunal has held that the appellants had not proved the identity of the offending vehicle and also the negligence of respondent no. 1. Respondents no.1 and 2 have been served but they have not appeared before this Court also either in person or through their advocate. As against that Ms. Sonal Vyas learned advocate for respondent no. 3 insurance company has supported the judgment of the Tribunal and has submitted that there is no reliable evidence on record which could establish the

identity of the offending vehicle as well as negligence of respondent no. 1. She has, therefore, submitted that the appeal be dismissed.

5. I have carefully gone through the R & P of the case including the judgment of the Tribunal and the oral evidence. I have also carefully considered the rival submissions. There is no dispute that child Seema died on account of the injuries received by her in vehicular accident which took place on 7th April, 1992 around 7:00 a.m., It is also not disputed that the child was proceeding to her school at that time. Whether the death was caused by vehicle driven by respondent no. 1 namely Premium Padmini bearing registration No. GJ-1-K-4433 and if yes, whether he was negligent and/or rash in driving the vehicle at the time of accident, are the questions to be decided by me. To ascertain this fact it is necessary to turn to the evidence of eye witnesses who are examined by the appellants. Vithalbhai Sharvanbhai is witness no. 2. He was aged about 80 years, at the time of deposition. He has stated that the incident took place at about 7:00 o'clock in the morning. One car knocked down the girl and dragged her to a distance of about 20 ft. He went there with water. However, the girl had died on the spot. He has stated that the girl appeared to be aged about eight years and she was going to school. He has stated that the

car was driven at an excessive speed. In the cross-examination by the learned advocate for the insurance company he has stated that that his residence is about half km., from the spot of the accident. He has also stated that immediately when the accident occurred people got collected and he went to bring water. When he reached again on the spot with water the offending vehicle had gone away. He has also stated that he knew the girl because she was daily passing by his residence. He has denied the suggestions that he had not seen the accident and he was giving false evidence because he knew the family members of the deceased girl.

6. Karshanbhai Bhalabhai is witness no. 3 of the appellants. He has stated that when he reached the spot the dead body of the deceased was lying there. One Ambassador car bearing registration No. GJ 1 K 4433 was also there. The girl was dragged upto a distance of about 20 ft. He has stated that the accident took place on 7th April, 1992 around 6:30 a.m. According to him the girl was aged about eight years. He has also stated that the car was driven with an excessive speed. In the cross-examination he has stated that he had studied upto 10th standard. He has further stated that the distance between his residence and the school in which he is serving as a

Teacher is about 10 kms. The place of accident is about a distance of 8 kms., from his residence. He has further stated that he started at about 5:30 a.m., on his vehicle to go to school. According to him the girl was studying in the same school. He has stated that he had not given any information to the Police. He went to the scene again since he was called to act as pancha. When the panchnama was drawn the offending vehicle was not there. He has denied the suggestions that since the deceased was studying in his school, he was giving false evidence. He has further stated in the cross-examination that he was not sure of the colour of the car, but he was certain that it was Ambassador car. He has also stated that he knew the difference between the Ambassador car and the Fiat car. He has denied the suggestions that he gave false evidence because the child was studying in his school. He has also denied the suggestions that the accident was never caused by the car of which he had given the number in examination-in-chief.

7. The aforesaid evidence of the eye witnesses is very clear and there is no reason to doubt the presence of these two persons at the spot of the accident. Their presence at that time and at that place was very natural. Vithalbhai is staying in that area itself, whereas

Karshanbhai is a Teacher and he daily goes to school around the time of accident. They have clearly stated that the car was driven with an excessive speed and it knocked down the deceased and thereafter, she was dragged upto a distance of about 20 ft. So far as Vithalbhai is concerned, he had even gone to fetch water for the child. It is also to be noted that respondent no. 1 has not chosen to enter the witness box and put forth his own version with regard to the accident. It is very surprising that the Tribunal has discarded their evidence, merely because Karshanbhai committed some error in describing the make of the car . The entire evidence cannot be discarded in this manner. It is to be kept in view that the accident took place on 7th April, 1992, whereas his deposition was recorded on 19th June, 2000 i.e., after lapse of about eight years and two months. In such circumstances, there is every possibility that he might have had some confusion with regard to the make of the car. That is not the reason to disbelieve him. The overall credibility of his evidence is required to be seen. So far as other witness is concerned, namely Vithalbhai, though he has not given the registration number of the car, his evidence lends adequate corroboration to the evidence of Karshanbhai. Hence, evidence of both these persons is sufficient to establish

not only the identity of the vehicle and the driver, but also the negligence and rashness of respondent no. 1. Apart from this evidence, there is one more aspect to be kept in view is that on that day at about 11:00 a.m. First Information Report was lodged with Odhav Police Station with regard to the accident in question. In the said F.I.R., the number of the vehicle has been given. The Police of Odhav Police Station registered the offence and commenced the investigation against respondent no. 1 and he was ultimately prosecuted for offence under Section 304-A of the Indian Penal Code. May be that considering the evidence that was led before the trial Court it would have reached to a conclusion that the prosecution had not proved the rash and negligent act beyond reasonable doubt and acquitted respondent no. 1, but at the same time, contemporary document namely F.I.R., did reveal the identity of the vehicle and also respondent no. 1. This fact also gives ample corroboration to the version of the eye witnesses. When such reliable and cogent evidence was there on record, it is very surprising that the Tribunal came to the conclusion that neither the identity nor the issue of negligence was established by the appellants. Such finding therefore, can be termed as perverse. It is, therefore, required to be quashed and set aside, and it

is hereby quashed and set aside. It is not in dispute that the offending vehicle was owned by the respondent no. 2 and it was insured with respondent no. 3. Hence, when respondent no. 1 drove the car, it can safely be presumed that he drove the car with the authority and permission of respondent no. 2. Consequently, for the negligence of respondent no. 1, respondent no. 2 is vicariously liable to answer any action arising under the Tort. The Tribunal has assessed the compensation at Rs.1,05,000=00. On perusing the discussion with regard to assessment of the compensation made by the Tribunal in its judgment, I find that by and large it is proper, just and legal and, therefore, I do not propose to carry out the exercise again to assess the compensation. Respondent no. 2 is, therefore, liable to pay the compensation to the appellants a sum of Rs.1,05,000=00. Since respondent no. 3 is the insurer and it has undertaken to discharge the liability which may arise against respondent no. 2 under the Act, respondent no. 3 is required to discharge the liability and pay compensation to the appellants. Hence, it is directed that respondents are jointly and severally liable to pay compensation to the appellants, a sum of Rs.1,05,000=00 together with interest at the rate of 12% from the date of application till realization with proportionate costs.

The amount to be deposited with the Tribunal within three months from the date of this judgment. Upon deposit of the amount, the Tribunal shall deposit 70% of the total amount in Fixed Deposit for a period of five years in any Nationalized Bank and balance 30% amount to be paid to the appellants after due verification, by A/c. Payee cheque.

8. The result is that the appeal is allowed with costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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